



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150305220-5469-01]

RIN 0648-BE76

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Snapper-Grouper Fishery off the Southern Atlantic States; Regulatory
Amendment 22**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 22 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 22), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would revise the annual catch limits (ACLs) for gag grouper (gag) and wreckfish, and the directed commercial quota for gag, based upon revisions to the acceptable biological catch (ABC) and the optimum yield (OY) for gag and wreckfish. The purpose of this proposed rule is to help achieve OY and prevent overfishing of gag and wreckfish in the South Atlantic

region while minimizing, to the extent practicable, adverse social and economic effects to the snapper-grouper fishery.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2015-0034" by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0034, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Mary Janine Vara, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you

wish to remain anonymous).

Electronic copies of Regulatory Amendment 22, which includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at

http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2015/reg_am22/index.html.

FOR FURTHER INFORMATION CONTACT: Mary Janine Vara, telephone: 727-824-5305, e-mail: mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: Gag grouper (gag) and wreckfish are in the snapper-grouper fishery and are managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Council developed Regulatory Amendment 22 in response to the completion of stock assessments for gag and wreckfish that were reviewed by the Council's Scientific and Statistical Committee (SSC). The SSC made ABC recommendations to the Council for gag and wreckfish that extend through 2019 and 2020, respectively, based upon the data used in the assessments. As noted below, the gag assessment was done through the Southeast Data Assessment and Review (SEDAR) process and the wreckfish assessment was initially prepared by third party

scientists and then peer reviewed through the Council's SSC Peer Review Process. The purpose of Regulatory Amendment 22 and this proposed rule is to adjust the ABC, ACL and OY for gag and wreckfish to address the recent stock assessment results and prevent overfishing while minimizing, to the extent practicable, adverse social and economic effects to the snapper-grouper fishery.

Status of Stock

In 2006, the gag stock was assessed through the SEDAR process and found to be undergoing overfishing and approaching an overfished condition (SEDAR 10 2006). The assessment was updated in 2014 to include data through 2012, and to provide new information on stock status (SEDAR 10 Update 2014). The 2014 update assessment indicated that the stock is undergoing overfishing based on the average fishing mortality rates from 2010-2012, but is not overfished. However, the Council's SSC noted that the fishing mortality rate for 2012, and the projected fishing mortality rate in 2013 based on the actual landings, suggested that overfishing did not occur in 2012 and 2013.

Consequently, NMFS determined that the gag stock was not undergoing overfishing. At its April 2014 meeting, the Council's SSC determined that the 2014 update assessment is the best scientific information available and recommended a revised ABC to the Council. The Council chose the recommended ABC, and then chose a revised OY and ACL.

A statistical catch-at-age assessment of the wreckfish stock in

the South Atlantic was conducted by non-governmental scientists in 2012. This assessment was outside of the formal stock assessment process, and the Council adopted a new SSC Peer Review Process in 2013 to address these types of third-party stock assessments and then determined that the wreckfish statistical catch-at-age assessment should be subject to the new process. The SSC reviewed the revised assessment at its April 2014 meeting, accepted it as representing the best scientific information available, and recommended a revised ABC to the Council. The Council chose the recommended ABC, and then chose a revised OY and ACL.

Regulatory Amendment 22

The Council would set a revised ABC, OY, and ACL for gag in Regulatory Amendment 22 to ensure that overfishing does not occur. The ACL and OY for gag would be set equal to 95 percent of the ABC. The directed commercial quota would be reduced from the commercial ACL by 27,218 lb (12,346 kg), gutted weight, to account for discard mortality after the commercial harvest for gag closes but the commercial harvest for shallow-water groupers remains open.

The Council also considered revising the recreational bag limit for gag in Regulatory Amendment 22. However, the Council decided not to make any changes to the recreational bag limit at this time.

The Council also recommended revising the ABC and OY and ACL for wreckfish in Regulatory Amendment 22, based on the revised stock assessment. The ACL would be set equal to the OY and the ABC.

Management Measures Contained in this Proposed Rule

Gag ACLs

This proposed rule would revise the directed commercial quota and the commercial and recreational ACLs for gag for the 2015 through the 2019 fishing years and subsequent fishing years. The directed commercial quota and the commercial and recreational ACLs would initially decrease from the 2014 levels but would gradually increase and exceed the 2014 levels in 2018, as biomass approaches the stock biomass expected to exist under equilibrium conditions (B_{MSY}). The commercial accountability measure (AM) for gag closes the commercial sector when the directed commercial quota is reached or projected to be reached. Therefore, this rulemaking would revise the directed commercial quotas for gag for the 2015 through the 2019 fishing years and subsequent fishing years. This proposed rule would also set the recreational ACLs for the 2015 through 2019 fishing years and subsequent fishing years. The recreational AM for gag states that when the recreational ACL is reached and gag are overfished, the recreational sector closes. However, regardless of the overfished status, if the recreational ACL is exceeded then the overage is deducted from the recreational ACL the following fishing year.

The commercial ACLs for gag proposed in this rule are: 322,677 lb (146,364 kg), gutted weight, 380,759 lb (172,709 kg), round weight, for 2015; 325,100 lb (147,463 kg), gutted weight, 383,618 lb (174,006 kg), round weight, for 2016; 345,449 lb (197,516 kg), gutted weight, 407,630 lb (184,898 kg), round weight, for 2017; 362,406 lb (164,385 kg), gutted weight, 427,639 lb (193,974 kg), round weight, for 2018; and 374,519 lb (169,879 kg), gutted weight, 441,932 lb (200,457 kg), round weight, for 2019 and subsequent fishing years.

The directed commercial quotas for gag (which are reduced from the commercial ACLs by 27,218 lb (12,346 kg)) proposed in this rule are: 295,459 lb (134,018 kg), gutted weight, 348,642 lb (158,141 kg), round weight, for 2015; 297,882 lb (135,117 kg), gutted weight, 351,501 lb (159,438 kg), round weight, for 2016; 318,231 lb (144,347 kg), gutted weight, 375,513 lb (170,330 kg), round weight, for 2017; 335,188 lb (152,039 kg), gutted weight, 395,522 lb (179,406 kg), round weight, for 2018; and 347,301 lb (157,533 kg), gutted weight, 409,816 lb (185,889 kg), round weight, for 2019 and subsequent fishing years.

The recreational ACLs for gag proposed in this rule are 310,023 lb (148,025 kg), gutted weight, 365,827 lb (165,936 kg), round weight, for 2015; 312,351 lb (149,137 kg), gutted weight, 368,574 lb (175,981 kg), round weight, for 2016; 331,902 lb (158,472 kg), gutted weight, 391,644 lb (186,997 kg), round weight, for 2017; 348,194 lb (166,251 kg), gutted weight, 410,869 lb (196,176 kg), round weight, for 2018;

and 359,832 lb (171,807 kg), gutted weight, 424,602 lb (202,733 kg), round weight, for 2019 and subsequent fishing years.

Wreckfish ACLs

This proposed rule would set the commercial and recreational ACLs for wreckfish for the 2015 through the 2020 fishing years and subsequent fishing years. The commercial and recreational ACLs would initially increase from 2014 levels but would gradually decrease in subsequent years as biomass approaches B_{MSY} ; however, ACLs would remain above 2014 levels through 2020 and subsequent fishing years. The commercial quota is equal to the commercial ACL and the individual transferable quota (ITQ) program serves as the commercial AM. If the recreational ACL is exceeded, the recreational AM reduces the length of the following fishing season, if necessary, to account for the overage.

The commercial ACLs for wreckfish proposed in this rule are: 411,350 lb (186,585 kg), round weight, for 2015; 402,515 (182,578 kg), round weight, for 2016; 393,490 lb (178,484 kg), round weight, for 2017; 385,985 lb (175,080 kg), round weight, for 2018; 376,960 lb (170,986 kg), round weight, for 2019, and 369,645 lb (167,668 kg), round weight, for 2020 and subsequent fishing years.

The recreational ACLs for wreckfish proposed in this rule are: 21,650 (9,820 kg), round weight, for 2015; 21,185 lb (9,609 kg), round weight, for 2016; 20,710 lb (9,394 kg), round weight, for 2017; 20,315

lb (9,215 kg), round weight, for 2018; 19,840 lb (8,999 kg), round weight, for 2019; and 19,455 lb (8,825 kg), round weight, for 2020 and subsequent fishing years.

Classification

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of Regulatory Amendment 22 and this proposed rule is to adjust the ABC, ACL and OY for gag and wreckfish to address the recent stock assessment results and prevent overfishing while minimizing, to the extent practicable, adverse social and economic effects to the snapper-grouper fishery. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would be expected to directly

apply to all commercial fishing vessels that harvest either gag or wreckfish in the South Atlantic EEZ. Over the period 2009-2013, an average of 245 vessels per year recorded commercial landings of gag and 6 vessels per year recorded commercial landings of wreckfish. More recent final data are not available. Because of where the different species are harvested (wreckfish are harvested at water depths of 450-600 m (1,476-1,969 ft)), whereas gag commonly occur at water depths of 39-152 m (127-499 ft)), these two groups of vessels are assumed to be mutually exclusive, though the vessels that harvest wreckfish may also harvest gag when not fishing for wreckfish and, if so, would be included in the count of vessels harvesting gag. This proposed rule would, therefore, be expected to affect an estimated 245 commercial fishing vessels per year that harvest gag and 6 commercial fishing vessels per year that harvest wreckfish. The estimated average annual gross revenue from all fishing activity by the commercial vessels that harvested gag over this period was approximately \$49,000 (2013 dollars) and the average for the vessels that harvested wreckfish was approximately \$288,000 (2013 dollars).

Charter vessels and headboats (for-hire vessels) sell fishing services, which include the harvest of gag and wreckfish, among other species, to recreational anglers. These vessels provide a platform for the opportunity to fish and not a guarantee to catch or harvest any species, though expectations of successful fishing, however

defined, likely factor into the decision to purchase these services. Changing the allowable harvest of a species only defines what can be kept and does not explicitly prevent the continued offer of for-hire fishing services. In response to a change in the allowable harvest of a species, including a zero-fish limit, fishing for other species could continue. Because the proposed changes in the gag and wreckfish quotas would not directly alter the service sold by these vessels, this proposed rule would not directly apply to or regulate their operations. For-hire vessels would continue to be able to offer their core product, which is an attempt to "put anglers on fish," provide the opportunity for anglers to catch whatever their skills enable them to catch, and keep those fish that they desire to keep and are legal to keep. Any change in demand for these fishing services, and associated economic affects, as a result of changing a quota would be a consequence of behavioral change by anglers, secondary to any direct effect on anglers, and, therefore, an indirect effect of this proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA. Recreational anglers, who may be directly affected by the proposed changes in the gag and wreckfish quotas, are not small entities under the RFA.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

The SBA has established size criteria for all major industry

sectors in the U.S., including commercial fish harvesters. A business involved in commercial fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Because the average annual revenue estimates provided above are significantly less than the SBA revenue threshold for this sector, all commercial vessels expected to be directly affected by this proposed rule are determined to be small business entities.

This proposed rule would set the annual commercial quotas for gag for 2015-2019 and beyond and for wreckfish for 2015-2020 and beyond. The 2019 gag commercial quota would remain in place in subsequent years unless changed, as would the 2020 wreckfish commercial quota. The proposed gag commercial quotas would be expected to result in a total reduction in revenue from gag for all vessels of approximately \$154,000 (2013 dollars) in 2015, approximately \$142,000 in 2016, and approximately \$42,000 in 2017. Beginning in 2018, the proposed gag annual commercial quotas would be more than the current quota and would, as a result, be expected to result in increased revenue from gag each year. If the annual reductions in gag revenue are not offset by increased harvest and revenue from other species (the average annual revenue from other species harvested by

these vessels was more than six times the revenue derived from gag from 2009-2013), the projected reductions in revenue from gag would equate to approximately \$630 per vessel (245 vessels) in 2015, or approximately 1.3 percent of average annual revenue from all fishing activity, and decline to \$580 per vessel in 2016, and \$170 per vessel in 2017. Averaged over the entire 5 years (2015-2019), the average annual reduction in revenue per vessel would be approximately \$160, or less than 1 percent of the average annual fishing revenue per vessel. As a result, this proposed rule would be expected to result in a minor adverse economic effect on the affected small entities.

All of the proposed wreckfish annual commercial quotas would allow higher than currently allowed harvest levels. As a result, the revenue and profits associated with commercial wreckfish harvest could increase and this proposed rule would be expected to have a beneficial economic effect on the affected small entities.

Based on the discussion above, NMFS determines that this proposed rule, if implemented, would not have a significant adverse economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual Catch Limits, Fisheries, Fishing, Gag, Quotas, South Atlantic, Wreckfish.

Dated: May 29, 2015.

Samuel D. Rauch III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.190, the last sentence in the introductory paragraph

for paragraph (a) and paragraphs (a)(7) and (b) are revised to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * * The quotas are in gutted weight, that is eviscerated but otherwise whole, except for the quotas in paragraphs (a)(4) through (7) of this section which are in both gutted weight and round weight.

* * * * *

(7) *Gag*--(i) For the 2015 fishing year--295,459 lb (134,018 kg), gutted weight; 348,642 lb (158,141 kg), round weight.

(ii) For the 2016 fishing year--297,882 lb (135,117 kg), gutted weight; 351,501 (159,438 kg), round weight.

(iii) For the 2017 fishing year--318,231 lb (144,347 kg), gutted weight; 375,513 lb (170,330 kg), round weight.

(iv) For the 2018 fishing year--335,188 lb (152,039 kg), gutted weight; 395,522 lb (179,406 kg), round weight.

(v) For the 2019 and subsequent fishing years--347,301 lb (157,533 kg), gutted weight; 409,816 lb (185,889 kg), round weight.

(b) *Wreckfish*. (1) The quotas for wreckfish apply to wreckfish shareholders, or their employees, contractors, or agents. The quotas are given round weight. See § 622.172 for information on the wreckfish shareholder under the ITQ system.

(i) For the 2015 fishing year--411,350 lb (186,585 kg).
(ii) For the 2016 fishing year--402,515 (182,578 kg).
(iii) For the 2017 fishing year--393,490 lb (178,484 kg).
(iv) For the 2018 fishing year--385,985 lb (175,080 kg).
(v) For the 2019 fishing year--376,960 lb (170,986 kg).
(vi) For the 2020 and subsequent fishing years--369,645 lb
(167,668 kg).

(2) [Reserved]

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3. In § 622.193, paragraphs (c) and (r) are revised to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(c) *Gag*--(1) *Commercial sector*. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable directed commercial quota, specified in § 622.190(a)(7), the AA will file a notification with the Office of the Federal Register to close the commercial sector for gag for the remainder of the fishing year. The commercial ACL for gag is 322,677 lb (146,364 kg), gutted weight, 380,759 lb (172,709 kg), round weight, for 2015; 325,100 lb (147,463 kg), gutted weight, 383,618 lb (174,006 kg), round weight, for 2016; 345,449 lb (197,516 kg), gutted weight, 407,630 lb (184,898 kg), round

weight, for 2017; 362,406 lb (164,385 kg), gutted weight; 427,639 lb (193,974 kg), round weight, for 2018; and 374,519 lb (169,879 kg), gutted weight, 441,932 lb (200,457 kg), round weight, for 2019 and subsequent fishing years.

(2) *Recreational sector.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable recreational ACL, specified in paragraph (c) (2) (iv) of this section, and gag are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the gag recreational sector for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limits for gag in or from the South Atlantic EEZ are zero. These bag and possession limits also apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) Without regard to overfished status, if gag recreational landings exceed the recreational ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the recreational ACL for that fishing year by the amount of the overage.

(iii) Recreational landings will be evaluated relative to the

ACL based on a moving multi-year average of landings, as described in the FMP.

(iv) The recreational ACL for gag is 310,023 lb (148,025 kg), gutted weight, 365,827 (165,936 kg), round weight, for 2015; 312,351 lb (149,137 kg), gutted weight, 368,574 lb (175,981 kg), round weight, for 2016; 331,902 lb (158,472 kg), gutted weight, 391,644 lb (186,997 kg), round weight, for 2017; 348,194 lb (166,251 kg), gutted weight, 410,869 lb (196,176 kg), round weight, for 2018; and 359,832 lb (171,807 kg), gutted weight, 424,602 lb (202,733 kg), round weight, for 2019 and subsequent fishing years.

* * * * *

(r) *Wreckfish*--(1) *Commercial sector*. The ITQ program for wreckfish in the South Atlantic serves as the accountability measure for commercial wreckfish. The commercial ACL for wreckfish is equal to the applicable commercial quota specified in § 622.190(b).

(2) *Recreational sector*. (i) If recreational landings for wreckfish, as estimated by the SRD, exceed the recreational ACL specified in paragraph (r)(2)(ii) of this section, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the

recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(ii) The recreational ACL for wreckfish is 21,650 (9,820 kg), round weight, for 2015; 21,185 lb (9,609 kg), round weight, for 2016; 20,710 lb (9,394 kg), round weight, for 2017; 20,315 lb (9,215 kg), round weight, for 2018; 19,840 lb (8,999 kg), round weight, for 2019; and 19,455 lb (8,825 kg), round weight, for 2020 and subsequent fishing years.

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